

HOGAN & HARTSON
L.L.P.

CHRISTINE A. VARNEY
PARTNER
(202) 637-6823
CVARNEY@HHLAW.COM

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW.HHLAW.COM

June 27, 2005

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-159 (Annex C)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: COPPA Rule Review 2005, Project No. P054505

Dear Secretary Clark:

Motion Picture Association of America ("MPAA") is pleased to submit these comments ("Comments") in response to the Federal Trade Commission's ("FTC" or "Commission") request for public comment on its implementation of the Children's Online Privacy Protection Act ("COPPA") through the Children's Online Privacy Protection Rule ("COPPA Rule" or "the Rule"), the costs and benefits of the Rule, as well as on whether the Rule should be retained, eliminated, or modified.¹

¹ These comments are in response to the Commission's request for public comment published in 70 *Fed. Reg.* 21107 (April 22, 2005), available at <http://www.ftc.gov/opa/2005/04/coppacomments.htm>.

Donald S. Clark, Secretary

June 27, 2005

Page 2

Several MPAA member companies² and their affiliates³ maintain Web sites directed to children, and all MPAA member companies operate multiple general audience Web sites. According to Nielsen NetRatings, six of the top twenty visited sites for children under thirteen are MPAA member company properties. Therefore, the MPAA member companies have direct and significant experience with the Commission's implementation of the Rule and can offer a first-hand understanding of the costs and benefits of the Rule. Additionally, MPAA has polled its member companies on questions regarding COPPA implementation and found the companies had virtually no knowledge of any complaints regarding the use of children's information on the companies' Web sites or the use of credit cards as a means of obtaining verifiable parental consent on the companies' Web sites.

MPAA believes that the Commission has successfully implemented and achieved the goals of COPPA through the COPPA Rule for the past five years. Children's online privacy and safety have been greatly increased because of the Rule, which has also provided certainty on standards where previously there was none. The Commission should retain the Rule in order to continue to protect the online privacy of children and provide clear guidance for Web site operators.

² MPAA members include: Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Warner Bros. Entertainment, Inc.; Universal City Studios LLLP; and The Walt Disney Company.

³ For example, Nickelodeon is an affiliate of Paramount Pictures, and Kids WB and Looney Kids are affiliates of Warner Bros. Entertainment, Inc.

Donald S. Clark, Secretary
June 27, 2005
Page 3

I. The COPPA Rule Has Been Effective and Should Be Retained.

The Commission should be congratulated on its implementation of the COPPA Rule, which has successfully protected children's online privacy for the past five years. The COPPA Rule has proven to be an effective means of protecting children's privacy and thus should be retained.

MPAA members complied with the COPPA Rule immediately after it went into effect, and since then, MPAA members have received virtually no complaints from parents concerning the use of their children's information obtained via members' Web sites. In earlier proceedings addressing the sliding scale mechanism,⁴ the Commission likewise implied that there have not been significant complaints from parents alleging breaches in their children's privacy by the operators of children's Web sites.⁵

The COPPA Rule provided certainty to Web site operators and parents when previously there was none. Before the COPPA Rule, Web site operators did

⁴ The sliding scale mechanism allows Web site operators to use email to get consent from parents for internal uses of a child's personal information. Disclosing a child's personal information to third parties requires "more reliable methods of obtaining verifiable parental consent" including print-and-send forms, requiring a parent to use a credit card in connection with a transaction, toll-free telephone numbers, digital certificates, or email accompanied by a password sent to the parent. *See* 16 C.F.R. § 312.5(b) (1999).

⁵ The sliding scale mechanism is effective, efficient, and successful. MPAA fully supported – and continues to support – the Commission's proposal to make permanent the sliding scale mechanism for obtaining verifiable parental consent. *See* MPAA Comments Re: Sliding Scale 2005, Project No. P054503 (Feb. 14, 2005).

Donald S. Clark, Secretary

June 27, 2005

Page 4

not have clear guidance as to how to best protect children's privacy.⁶ This led to confusion among Web site operators and non-uniform policies that differed from site to site, while parents were left without a clear understanding of how their children's privacy was to be protected. The COPPA Rule provides clear mandates that allow both regulators and Web site operators to easily gauge compliance. In so doing, the Rule gives parents confidence that the standards will be consistently implemented and that compliance with these uniform rules will protect their children.

In the absence of complaints or other record evidence that the COPPA Rule has been inadequate, there is no valid reason to modify or eliminate a rule that has been effective and continues successfully to provide protection for children, peace of mind to parents, and certainty to Web site operators.

II. Costs of Complying with COPPA on an On-going Basis Are Manageable; To Change the Current Regulatory Scheme Would Be Burdensome and Unnecessary.

MPAA companies expend significant financial and personnel resources in order to ensure compliance with the COPPA Rule. While initial implementation costs were generally not prohibitive, MPAA member companies each currently

⁶ See *In the Matter of Geocities*, Docket No. C-3850, Complaint, available at <http://www.ftc.gov/os/1999/02/9823015cmp.htm>; *In the Matter of Liberty Financial Companies, Inc.*, Docket No. C-3891, Complaint, available at <http://www.ftc.gov/os/1999/08/libertycmp.pdf>. These two complaints were issued before the COPPA Rule went into effect and were based solely on the FTC's authority to prohibit unfair and deceptive trade practices under Section 5 of the FTC Act.

Donald S. Clark, Secretary

June 27, 2005

Page 5

employ several privacy professionals, including webmasters and attorneys, to oversee their Web site activities to ensure compliance with the COPPA Rule.⁷

MPAA companies operate a wide range and a large number of Web sites, from general audience sites to those directed to children; to require a structural change governing how both the children's and general audience sites are to be monitored would be disruptive and counter-productive.

All MPAA member companies' Web sites produced in the past five years have been developed with COPPA Rule compliance in mind. Changing the regulatory regime that governs all of these Web sites as well as those currently in development would be extremely burdensome. Costs would include: financial outlays to implement the changes overall; labor costs associated with implementing these changes; transactional costs while the regulations and Web sites are in transition; innovation costs when Web sites become wary of investing significant funds in new technology or programs if the regulatory scheme seems unstable; and the unquantifiable costs of consumer uncertainty in the face of changes to a successful and known system. Given the absence of consumer complaints, a change

⁷ At least one MPAA member company employs monitors for its online bulletin boards to ensure that no personally identifiable information is disclosed. Another MPAA member company estimated that costs of continued COPPA compliance include 20-25 hours per month of attorney time and substantial production time because COPPA compliance is built into every general audience as well as children's site.

Donald S. Clark, Secretary

June 27, 2005

Page 6

in the Rule would not provide a benefit sufficient to justify the significant costs that would result from any unnecessary changes in the Rule.

III. It Is Reasonable and Effective To Use a Credit Card as a Means of Obtaining Verifiable Parental Consent.

The Commission has requested comments as to whether the use of a credit card is a reasonable means of verifying whether the person providing consent is the child's parent. MPAA believes that the use of a credit card number is a reasonable, effective, and efficient means of obtaining verifiable parental consent and thereby complying with the COPPA Rule's requirement. There has been some discussion regarding the alleged marketing of debit and credit cards directly to children under the age of thirteen. MPAA member companies have no knowledge of the extent of credit or debit card distribution to children under the age of thirteen, and therefore cannot comment on children having credit or debit cards in their own name. Nonetheless, if a child is using a credit or debit card, he/she is presumably acting with the approval and oversight of his/her parents who would remain financially responsible for any charges incurred on the card. MPAA finds no empirical or experiential data suggesting otherwise and therefore the MPAA does not support changes to the credit card verification procedure. If the alleged marketing of debit and credit cards to children is occurring, it does not warrant a change in the efficient and effective regulatory structure that COPPA has created.

Donald S. Clark, Secretary

June 27, 2005

Page 7

The use of a credit card as a means of obtaining verifiable parental consent allows parents a “double-check” on their children’s privacy. First, parents presumably have control of their credit cards and can decide whether to use them as verification or confirmation when their children provide personal information online. Second, even if the child and not the parent is providing the credit card (which is not an assumption MPAA member companies make), parents can monitor any potential misuse by reviewing their monthly credit card statements. The availability of these two checks should provide comfort to parents and protection to children, and provides consistency to industry.

Over the past five years, parents and children have become familiar and comfortable with the use of a credit card as one of the means of providing verifiable parental consent. MPAA member companies know of virtually no complaints regarding the use of credit cards to obtain verifiable parental consent on their Web sites. Parents presumably monitor the activities on their credit cards and would therefore have easy access to any indicators of potential misuse. Again, in the absence of complaints and the presence of a familiar and workable regulatory scheme, there is no reason to change a successful and effective Rule.

Furthermore, e-commerce presumes that a person who uses a credit card has authorization to do so and is thirteen years of age or older. To require age checks for every use of a credit card would flip a fundamental premise of e-

Donald S. Clark, Secretary

June 27, 2005

Page 8

commerce on its head, and would provide significant transaction costs for e-commerce Web site operators. It would similarly be inefficient and burdensome to require companies to put an age screen on all of their Web stores. All MPAA member companies operate online stores and would be negatively affected by such a change. The Commission should continue to allow the use of a credit card as a reasonable and effective means of obtaining verifiable parental consent.

IV. Conclusion

MPAA companies have had positive experiences with the FTC's implementation of COPPA, finding the Rule to be successful and effective over the course of the past five years. MPAA companies expend significant resources in order to remain COPPA-compliant. Importantly, MPAA members know of virtually no complaints regarding the use of children's information on their Web sites or regarding the use of credit cards to obtain verifiable parental consent on their Web sites. In light of the Rule's success at protecting children's privacy and providing certainty to parents, children, and Web site operators, it would be bad public policy to impose additional costs or to abandon such a proven, effective method of protecting children's privacy.

MPAA congratulates the FTC on its protection of children's online privacy through the promulgation and enforcement of the COPPA Rule and urges

HOGAN & HARTSON L.L.P.

Donald S. Clark, Secretary

June 27, 2005

Page 9

the FTC to retain the Rule in its current form, thereby cementing the successful regulations that children, parents, and Web site operators have come to understand and rely on. The COPPA Rule provides security, protection, and certainty in the arena of children's online privacy and for that it should be commended and preserved.

Sincerely

Christine Varney
Mary Ellen Callahan
Tulasi A. Leonard
Hogan & Hartson L.L.P.
Counsel to MPAA